IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.605 OF 1990

Dhanpal Kallappa Nigave,)
R/o.Hatkanangale,)
District Kolhapur.) ...Appellant

Versus

The State of Maharashtra) ...Respondent

Shri A.P.Mundargi for the Appellant.

Shri S.V. More, A.P.P for the Respondent.

CORAM : ABHAY S. OKA, J.

DATE : NOVEMBER 08, 2006.

JUDGMENT:

1. I have heard the learned senior counsel appearing for the Appellant and the learned A.P.P for the State. The challenge in this Appeal is to the Judgment and Order of conviction of the Appellant (Orginial accused No.1) for offences punishable under section 498-A and Section 304-B of the Indian Penal Code (hereinafter referred to as the Penal Code). Alongwith the Appellant his parents and his younger brother (the accused Nos.2 to 4) were also charged with the said offences. The learned Trial Judge has acquitted the accused Nos.2 to 4 of the said offences. The Appellant is sentenced to suffer simple

imprisonment for two years for the offence under section 498-A and to pay a fine of Rs.1,000/-. In default, he is directed to suffer rigorous imprisonment for six months. For the offence punishable under section 304B of the Penal Code, he has been sentenced to suffer simple imprisonment for seven years. The substantive sentences imprisonment are directed to run concurrently. It appears that throughout the trial, the Appellant was on bail and while admitting this Appeal, this court enlarged the Appellant on bail.

2. Briefly stated the case of the prosecution is that the marriage between the Appellant and deceased Lalita was solemnised in the year 1986. After the solemnisation of the marriage, Lalita started residing at her matrimonial home at village Hatkanangale. According to the prosecution case whenever Lalita visited her parents, she used to complain that the accused persons were beating her for forcing her to meet with their demand of money and a scooter. Lalita delivered her first child while she was staying with her parents. For the naming ceremony of the child, the accused had come to the house of her parents. Deceased Lalita’s father gave gifts to the members of

the family of the accused persons according to the custom prevailing in the community. However, the accused persons were not satisfied and they left the house angrily. After four months the deceased Lalita was sent back to her matrimonial home alongwith her brother. At that time her father gave a cot and mattresses to the accused persons. Thereafter, whenever father used to inquire with deceased Lalita, she used to complain about the ill-treatment given to her by the accused. On 22nd February, 1990 the Appellant (accused No.1) and his friend came to Lalita's father and informed him that there were quarrels in the house. Thereafter Lalita's father deputed her brother to the matrimonial home. When the brother visited Lalita's matrimonial home, she informed him that she was assaulted by the accused persons. On 24th February, 1990, Lalita's father received a message that she had sustained burn injuries and had been taken to a hospital at Ichalkaranji. Her father and other family members immediately rushed to Ichalkaranji. By that time she was taken to civil hospital at Sangli. According to the prosecution case, she told her father that she was tired of ill-treatment and hence she had set herself on fire. The said Lalita succumbed to burn injuries.

The F.I.R was lodged by her father on 10th March, 1990. According to the case of the prosecution, on 24th February, 1990 at about 1.30 p.m, a dying declaration of Lalita was recorded in presence of a Special Executive Magistrate Salma Hasan Shirolkar (P.W.3).

3. The learned senior counsel appearing for the Appellant invited my attention to the depositions of the witnesses and the dying declaration at Exhibit 22. He submitted that in the dying declaration the deceased had clearly stated that she had no grievance against her husband i.e the Appellant and her grievance appears to be about the ill-treatment given to her by her mother-in-law and father-in-law. He submitted that if the dying declaration at Exhibit 22 is read as it is, the evidence of all other witnesses is a hearsay evidence as the same is completely contrary to the version of the deceased in the dying declaration. He submitted that there is absolutely no evidence on record to show that there was any demand for dowry within the meaning of section 304-B of the Penal Code by the Appellant. He submitted that in any event there was no evidence at all of the Appellant subjecting the deceased to cruelty or harassment in

connection with any demand for dowry. He, therefore, submitted that the offence under section 304-B was not made out. He submitted that the only grievance made by the deceased in her dying declaration against the Appellant is that two days prior to the incident, the Appellant gave two slaps when the deceased raised suspicion on the ground that her husband was talking to a woman residing in the neighbourhood. He submitted that the deceased herself had stated that thereafter her husband and her brother explained to her that her husband had nothing to do with the said woman. She stated that till the incident her relationship with husband was normal. He submitted that the said conduct of the Appellant which is reflected from the dying declaration can by no stretch of imagination amount to cruelty as defined in the explanation to section 498A of the Penal Code. He, therefore, submitted that the Appellant is entitled to order of acquittal.

4. The learned A.P.P appearing for the State supported the impugned Judgment and Order. He stated that prosecution witnesses have consistently deposed about the demand for money and a scooter by the Appellant and other members of the family of the

Appellant and the harassment suffered by the deceased on account of her failure to meet the demands. He submitted that the consistent evidence of the prosecution witnesses read with dying declaration clearly proves the prosecution case regarding demand of dowry and the cruelty and/or harassment to the deceased for or in connection with the said demand of dowry. He submitted that in the dying declaration the deceased has stated that she committed suicide as a result of two slaps given by her husband. He submitted that the deceased was consistently subjected to cruelty and harassment by the Appellant. He submitted that no interference is called for.

5. The prosecution has examined eight witnesses. For appreciating the submissions made by the learned counsel for the parties, it will be necessary to refer to depositions of the witnesses. Before turning to the deposition of the witnesses it must be noted here that the Appellant has not disputed the panchnama of scene of offence (Exhibit 13), advance certificate of death (Exhibit 14), the post mortem notes (Exhibit 20) and the dying declaration (Exhibit 22). P.W.4 Jagonda Appa Patil is the father of the deceased who is the first informant. He stated that the marriage was

solemnised in the year 1986. He stated that whenever Lalita used to visit his house, she used to tell that her in-laws used to abuse and beat her. According to him deceased Lalita told him that her husband's brother and their mother used to beat her. According to him Lalita also told him that her in-laws demanded money and a scooter from her. According to him, he informed Lalita that he would satisfy the demands in a year. He stated that at the time of the incident, Lalita's elder daughter was one year old and Lalita was pregnant. At the time of her first delivery, Lalita was residing with her parents. He stated that at the time of naming ceremony, the accused had come to his house and he gave gifts to the accused persons. According to him while leaving his house, the in-laws of Lalita were unsatisfied and angry. He stated that while sending back Lalita to her matrimonial home four months after the delivery of the child, his son Dhanikumar accompanied Lalita and he gave a cot and a mattress to Lalita's father-in-law.

6. On 22nd January, 1990 the Appellant and his friend had come to his house and took his son Surendra to their house stating that there was a quarrel. According to him after coming back, Surendra informed

him that Lalita had shown her back having weal marks to him as her in-laws had beaten her. He stated that on 24th February, 1990 a person from the house of the accused persons informed his family members that Lalita had sustained burns. He has stated that thereafter he alongwith family members rushed to the hospital. According to him Lalita informed him that she was continuously ill-treated by her in-laws and hence she had set herself on fire. Lalita succumbed to injuries on 25th February, 1990. He lodged the complaint on 10th March, 1990 in the police station. In the cross-examination, he admitted that he was unable to tell the day, date, month or year when Lalita complained of ill-treatment at the hands of the accused. He admitted that he has not stated in the F.I.R that he informed his daughter that he would satisfy the demands made by her in-laws in a year. He admitted that the accused persons had given gifts to his daughter. He admitted that F.I.R was lodged 15 days after the incident. He stated that prior to that he had given an Application to the police. He further stated that the said Application was not on record. He stated that he did not inquire about the alleged ill-treatment to Lalita with any one save and except Mahavir. He stated that after the Appellant and his

friend had come to his house on 22nd February, 1990 informing about the quarrel involving the Appellant and Lalita, he felt it necessary to visit Lalita's house. However, he did not visit her house. He admitted that he has not mentioned in the F.I.R that Lalita had shown marks on her back to her brother Surendra. He admitted that on 25th February, 1990 he returned to Hatkanangale and the Police Station at Hatkanangale is just adjacent to S.T.stand. He stated that at that time he did not lodge any complaint about incident.

7. P.W.5 Vasant Dhanpal Tone is a person well-known to the family of the Appellant who had attended the marriage of the Appellant and the deceased. He stated that initially everything went on smoothly for four to five months and subsequently there were quarrels between Lalita and her in-laws. He stated that Lalita had visited his house on two occasions when she told that she was ill-treated by her in-laws for demand of money. It is pertinent to note that the said witness has not stated about the demand of a scooter. He stated that on 22nd February, 1990 after Lalita's brother Surendra received a message about the quarrel, he alongwith Surendra went

to the matrimonial home of Lalita. At that time Lalita was cooking food and her mother-in-law and father-in-law were present. On inquiry being made, Lalita told that she has been beaten by her in-laws. She showed weal marks on her back. According to him he asked Lalita's husband and mother-in-law as to why they had beaten Lalita. According to him they replied by giving false reasons. On 24th February, 1990 he was informed that Lalita had set herself on fire. The said witness alongwith his wife went to the hospital at Sangli and met the said deceased Lalita. According to him deceased Lalita told her that she had set herself on fire. The witness further stated that at that time he felt that members of the family of her husband must have burnt her. In the cross-examination he admitted that the police had recorded his two statements and in the first statement he did not mention that the accused had ill-treated Lalita for demand of money.

8. P.W.6 Surendra is brother of the deceased. Though his father did not state specifically that the Appellant used to beat and ill-treat Lalita for demand of money and scooter, but the said Surendra has stated so. He stated that on 22nd February, 1990 the

Appellant and his friend came to his house and informed him that there was a quarrel in his house. Accordingly, alongwith Vasant (P.W.5) he visited the matrimonial home of the deceased. According to him, at that time, the deceased was weeping. He stated that witness Tone requested Lalita's in-laws to give her good treatment. He admitted that statement of Lalita was recorded by the police. He stated that Lalita told him that she was illtreated and when the illtreatment because unbearable, she set herself on fire. He stated that it was a serious matter and it was necessary to lodge the complaint but he did not lodge the complaint. In the cross-examination he admitted that after four months from the date of delivery of the child, Lalita went to her matrimonial home and at that time his brother Ashok was with her. In the cross-examination he stated that he stated before the police that though Lalita told him that she had set herself on fire, yet he felt that she might not have set herself on fire.

9. The other material witness is P.W.3 Salma Shirolkar who was at the relevant time a Special Executive Magistrate. She allegedly recorded dying declaration at Exhibit 22. In her

examination-in-chief she deposed about the report received by her from the Police Station. She stated that on 24th February, 1990 at about 1.30 p.m, she recorded the statement of the deceased in the form of question and answer. She stated that after recording her statement, she read over the contents to the deceased and obtained her thumb impression on the statement. She stated that she obtained remarks of the medical officer on the statement. Thereafter she put a rubber stamp of her designation and signed the same. In the cross-examination, she stated that the burnt women Lalita stated before her that she had no complaint against her husband and in-laws. She admitted that the deceased did not state before her that her husband and in-laws subjected her to ill-treatment in connection with any demand for money. Infact, she admitted that the deceased did not state before her that her husband and her in-laws ill-treated her.

10. P.W.7 Shivaji Desai is a police officer who was attached to the Hatkanangale police station. He received the first information report. P.W.8 Vasant Patole was the Police sub-inspector attached to the said police station. In his deposition, portion

marked "A" of the statement of Surendra was proved and was exhibited.

11. At this stage it will be necessary to refer to the dying declaration at Exhibit 22. The dying declaration has been recorded by the P.W.3 in Marathi language in a question and answer form. The medical officer has certified on the dying declaration that patient was fully conscious and was in a position to give statement. While responding to a question as to why she had set herself on fire, she replied that two or three days back she had a quarrel with her husband. The next question asked to her was as to what was the cause of the fight between herself and the husband. She stated that she noticed that her husband was talking to a woman residing in the neighbourhood and therefore, she became suspicious. She stated that he gave two slaps to her. She admitted that while the fight with the Appellant (her husband) going on, he explained to her that he was not at all concerned with the woman. She stated that the Appellant also called her brother Surendra. Her brother also explained the situation to her by stating that they should not fight. Thereafter Lalita stated in the dying declaration that they lived together happily for two

days. She stated that two or three days after the said quarrel, her brother-in-law stated that if the food was cooked by her he would not eat the said food. At that time the father-in-law and mother-in-law of the deceased informed her that her brother-in-law was not prepared to stay with her and therefore the deceased and accused should reside separately. She stated that at that time the Appellant had been to his agricultural land. She stated that Appellant's behaviour with her was very good. She further stated that on the date of the incident her mother-in-law informed her to stay separately. While her mother-in-law was taking bath, she poured kerosene on her own person and lighted a match. She stated that she had no grievance against her husband but her grievance was against her father-in-law and mother-in-law.

12. Section 498A and 304B reads thus:

> **"498A. Husband or relative of husband of a woman subjecting her to cruelty.**-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment

for a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purpose of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

304B. Dowry death.-(1) Where the death of a woman is caused by any burns of bodily injury or occurs otherwise than under normal

> circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.
>
> Explanation.-For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).
>
> (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life".

The Apex Court had occasion to consider the meaning assigned to the word cruelty used in section 498-A of the Penal Code in the case of **Giridhar Shankar Tawade Vs. State of Maharashtra [(2002) 5 Supreme Court Cases Page 177)** the Apex Court in paragraph No.3 held thus:

"3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislature: whereas Explanation (a) involves three specific situations viz.(i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498-A".

13. So far as section 304-B is concerned, in the case of **State of Rajasthan Vs. Teg Bahadur and Others (2005 Supreme Court Case (Cri.) Page 218)** it was held that for proving the offence under section 304-B of the Indian Penal Code the prosecution has to prove that the death of the married woman was within seven years of the marriage and soon before her death she was subjected to cruelty or harassment by her husband or relative of the husband for or in connection with demand for dowry. The Apex Court further held that on conjoint reading of section 113-B of the Indian Evidence Act and section 304-B of the Penal Code, it is clear that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment. In the case of **Hira Lal & Others Vs. State (Government of NCT), Delhi (2003 Supreme Court Cases (Cri.) Page 2016)** it was held that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. However, the Apex Court held that "soon before" cannot be given a narrow meaning so as to interpret it as "immediately before".

14. In the light of the legal position, the

evidence on record will have to be appreciated. Firstly, it must be borne in mind that though on 24th February, 1990 the P.W.4 Jagonda was aware that the deceased had attempted to commit suicide, the F.I.R was lodged on 10th March, 1990. The deceased expired on 25th February, 1990. There is hardly any explanation for the said delay of atleast 15 days. In paragraph No.1 of his deposition, P.W.4 has stated thus:

> "Lalita told me that her husband and his brother and their mother used to beat her. Lalita also told me that her in-laws demanded money and scooter from her".

Thus, his case is that Lalita had informed him that the Appellant, his brother and his mother used to beat her. He, however, did not state that the demand for money and a scooter from her was by her husband. He stated that demand was by her in-laws. The marriage between the Appellant and deceased was solemnised in the year 1986. In that context it is relevant to note that in the cross-examination, P.W.4 stated that he was unable to tell the day, date, month or year when Lalita complained about the ill-treatment at the hands of the accused. P.W.4 has not stated that there was

any demand by any accused person either of money or a scooter at any time which is in close or even a reasonable proximity with the date of commission of suicide. The allegation made by P.W.4 as regards demand of money and scooter is very vague. After the naming ceremony of the first child of Lalita, P.W. 4 stated that he gave gifts to the accused persons who had come to his house. He further stated that while living his house, in-laws of Lalita were angry and unsatisfied. Here again there is no specific allegation against the Appellant and allegation is against the in-laws of Lalita. His further deposition is about the incidents of cruelty and harassment to Lalita which were narrated to him by his sons. He stated that Dhanikumar after visiting the matrimonial home of Lalita informed him that Lalita's in-laws have ill-treated her. According to him even on 24th February, 1990 when he alongwith his family members met Lalita in civil hospital, she informed him that she was ill-treated by her in-laws continuously and hence, she had set herself on fire. He further stated that his son Surendra met deceased Lalita on 22nd February, 1990. According to him Lalita had shown marks on her back to his son Surendra. His version is that Surendra informed him that Lalita disclosed to

him that the marks on her back were as a result of beating given to her by her in-laws. He admitted in the cross-examination that in the F.I.R he has not stated that Lalita had shown marks on her back to his son Surendra on 22nd February, 1990. There is no explanation in his deposition as to why he waited till 10th March, 1990 to lodge the F.I.R.

15. P.W.5 Vasant Tone stated that after first five to six months of marriage, there were quarrels between Lalita and her in-laws. According to him Lalita had informed him that she was being ill-treated by her in-laws for demand of money. He has not at all stated that Lalita had informed him that the Appellant had assaulted her or that the Appellant (husband) had made a demand that money or scooter. He stated that on 22nd February, 1990, he visited Lalita's matrimonial home alongwith her brother Surendra. He stated that at that time the mother-in-law and father-in-law of Lalita were present in the house. He stated that Lalita told him that her husband had beaten her two or three days prior to that day. The said witness deposed that on 24th February, 1990 Lalita told him that she had set herself on fire. He deposed that he was under impression that her in-laws must have set

her on fire. In the cross-examination he admitted that the police had recorded his first statement prior to lodging of the F.I.R and second statement was recorded after lodging F.I.R. He stated that in his first statement it is not mentioned that the accused had ill-treated Lalita for demand of money.

16. P.W.6 Surendra Jagonda Patil stated that when Lalita had come to his father's house she stated that her husband, her husband's brother and mother used to beat and ill-treat her for demand of money and scooter. As stated earlier, P.W. 4 Jagonda has not stated anything about demand of money and scooter by the husband of the deceased. Again P.W. 6 has not stated at what point of time the deceased had made the said complaint to him. As pointed out earlier, P.W.5 stated that when he alongwith P.W.6 Surendra visited matrimonial home of Lalita on 22nd February, 1990, Lalita informed them that her husband had beaten her two or three days prior to that day. However, P.W.6 Surendra has simply stated that Lalita was weeping and she told that she was beaten up. According to his version, on 24th February, 1990, Lalita told him that because ill-treatment had become intolerable, she had set herself on fire. In the cross-examination he

admitted he stated before the police that though Lalita had told him that she had set herself on fire, he felt that she might not have set herself on fire.

17. P.W.7 Shivaji Desai who recorded statement of P.W.5 Vasant Tone, admitted in cross-examination that Vasant did not state that Lalita was ill-treated for the demand of money.

18. That takes me to the dying declaration which is relied upon by the prosecution. It is true that in the first part of the dying declaration the deceased stated that she had set herself on fire as three days prior to that day, she had a quarrel with her husband. In further part she stated that she saw her husband talking to a woman residing in neighbourhood and as she suspected of her husband, she had a quarrel with her husband. She stated that at that time two slaps were given by her husband on her face. She further stated that her husband explained to her that he was not concerned with the said woman. Her husband also called her brother Surendra. According to her, Surendra also explained to her that she should not quarrel with her husband. She stated that thereafter for two to three days she cordially stayed with her.

She further stated that thereafter her brother-in-law stated that he will not eat the food cooked by her. At that juncture her father-in-law and mother-in-law stated that she alongwith her husband must stay separately. She stated that perhaps she was not wanted in matrimonial home by her in-laws. She stated that at that time her in-laws started quarrelling with her. She stated that at that time her husband was on the field and her husband was very nice to her. She stated that when she had set herself on fire, her husband was in the field and her mother-in-law was taking bath. She stated that her mother-in-law told her to stay separately and left for taking bath. She stated that thereafter she poured kerosene on her person from plastic container and set herself on fire. She stated that she was prepared to state all the aforesaid on oath. When being asked whether she had any grievance about any one, she stated that she had no grievance against her husband but had a grievance against her mother-in-law and father-in-law, because they quarrelled with her and told her to stay separately. She stated that as a result of her quarrel with her mother-in-law and father-in-law she poured kerosene on her person and set herself on fire. P.W.3 Salma, the Special Executive Magistrate stated

that after recording her statement the same was read over to her and thereafter the deceased affixed a thumb impression on the statement. In the cross-examination she admitted that Lalita stated before her that she had no complaint against her husband and her in-laws. She admitted that Lalita did not state before her that her husband and in-laws subjected her to ill-treatment in connection with her demand for money.

19. As stated earlier, P.W.4 the father of the deceased and P.W.5 Vasant Tone who is an independent witness have not stated anything about any demand made by the Appellant-husband. They have deposed about the demand made by the in-laws of the deceased of money and scooter. Both of them have not stated either month or year in which the said demand was made. Only P.W.6 Surendra has stated that demand was made by the Appellant of money and scooter. Again he has not stated that the demand was made by Appellant at any time which is in close proximity to the date of suicide. Even the dying declaration of the deceased (Exhibit 22) does not refer to any demand of money or scooter or anything else by the Appellant-husband. Therefore, even assuming that there was any cruelty or

harassment on the part of the Appellant, the prosecution has not at all proved that the harassment or cruelty was for or in connection with the demand for a dowry. Thus, it is obvious that section 304-B is not at all attracted so far as the Appellant is concerned.

20. It is not necessary to examine the allegations made against the father-in-law and mother-in-law as the case against them have resulted in acquittal.

21. In so far as section 498-A is concerned, except from the deposition of P.W.6 Surendra, no other witness has stated anything specifically about the harassment or cruelty by the Appellant to the deceased. The allegation made by P.W.4 Surendra is very vague in the sense that he has simply stated that Lalita had informed him that the Appellant, his brother and his mother used to beat and used to ill-treat her. P.W.5 has attempted to state that on 22nd February, 1990 when he alongwith Surendra visited the matrimonial home of Lalita, she informed that her husband had beaten her two to three days prior to that day. However, P.W.6 (the brother of the deceased) has not stated so.

22. Accepting the dying declaration as it is, it appears that two slaps were given by the Appellant-husband on the face of the deceased. However, slaps were given when the deceased suspected about the Appellant's character as she saw him talking to a woman residing in neighbourhood. The deceased herself stated that as a result of the suspicion expressed by her, there was a quarrel between herself and her husband. If dying declaration is read as a whole, the reason for committing suicide appears to be insistence of the mother-in-law and father-in-law that she alongwith her husband must reside seperately. Infact, she has stated that after the Appellant had given her slaps, for two to three days, she leaved happily with the Appellant. She has stated that the Appellant was very nice to her and she had absolutely no grievance against the Appellant. Cruelty covered by explanation (a) of section 498-A comes into picture when a willful conduct is established on the part of the accused which is of such nature as is likely to drive the woman to commit suicide or to cause grave injury to the life, limb or health of the woman. Going by the dying declaration of the deceased, two slaps given by the Appellant was preceded by a

suspicion expressed by the deceased herself about the character of the Appellant. Further part of dying declaration shows that she was not driven to commit suicide because of the two slaps which were given by the Appellant. In fact after the said incident, she happily stayed with the Appellant. The emphasis in clause (a) is on the willful conduct of the accused. It is obvious that clause (a) will not be attracted. Clause (b) comes into picture when the harassment of the woman is with a view to forcing her meet any unlawful demand for any property or valuable security. I have already held earlier that there is no evidence of any demand made by the Appellant. Therefore, clause (b) of explanation to section 498-A will not apply.

23. It will be necessary to refer to the reasoning recorded by the learned Trial Judge. The learned Trial Judge seems to have proceeded on assumption that there was a demand by the Appellant-husband of money or the scooter. He has not even considered the aspect that none of the witnesses have stated at what point of time the said demand was made or at what point of time the said demand was disclosed to Lalita. The learned Judge has presumed that certain gifts were

given by P.W.4 to the in-laws of the deceased but the Appellant was unsatisfied and left the house angrily. Infact, that is not the specific statement made even by P.W.4. He has referred to dissatisfaction and anger expressed by the in-laws of the deceased. In paragraph No.9 the learned Judge has observed thus:

> "After considering the versions of these three witnesses simultaneously, it clearly appears that the deceased Lalita had complained specifically to all these 3 witnesses that her husband used to beat her for demand of money and scooter. The learned defence counsel has succeeded in bringing on record that neither Surendra nor Tone have stated in their previous statement about looking weal marks on the back of deceased Lalita. Therefore, there is contradiction the point of looking weal marks on the back of Lalita. However, the versions of all these witnesses remained firm and unshattered on the point that accused No.1 used to beat and abuse to Lalita for demand of money and scooter. Therefore, the prosecution has proved that

> Lalita's husband, accused No.1 alone used to subject her to ill-treatment for demand of money and scooter".

The said observations are completely contrary to the evidence on record as the demand of money and scooter by the Appellant-husband is not at all established by the prosecution.

24. The learned Judge has relied upon decision of the Apex Court in the case of **Vasant Narayan Pawar Vs. State of Maharashtra (A.I.R. 1980 Supreme Court Page 1270)** and has come to the conclusion that merely because the deceased has stated in the dying declaration that she has no grievance against the Appellant-husband, the said part of the dying declaration will not nullify the prosecution case of harassment and cruelty by the Appellant in connection with demand of money and scooter. The said finding of the learned Judge is based on the misreading of the decision of the Apex Court in the case of V.N.Pawar (Supra). This was a case where in the dying declaration the wife had stated that her husband had burnt her. However, she had further stated that even if she was dying having been burnt by her husband, he

should not been beaten. In the context of this particular dying declaration, the Apex Court observed that the later part of the statement could not be converted into one which is exculpative of the accused. In the present case, the deceased has stated that two slaps given by the Appellant to her in the peculiar circumstances narrated in the dying declaration. Thus, the reliance placed by the learned Judge on the decision in the case of Vasant (supra) was not correct.

25. The learned Trial Judge has recorded the finding of guilt without considering ingredients of the offences under section 498-A and 304-B of the Penal Code. As stated earlier the in-laws of the deceased have been acquitted by the Trial Judge.

26. Hence, the Appeal must succeed and I pass following order:

(i) The conviction and sentence of the Appellant by the Judgment and Order dated 31st August, 1990 passed by the 4th Additional Sessions Judge, Kolhapur in Sessions Case No.66 of 1990 is quashed and set aside and the Appellant is

acquitted of the offences alleged against him.

(ii) Bail bonds of the Appellant stand cancelled.

JUDGE